

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HYUNG SUK KIM and JI HYEON SEOL, and
their marital community, and JI HYEON SEOL
on behalf of Y.K., a minor,

Plaintiffs,

v.

STEVE BACK and JANE DOE BACK, and
their marital community, and BINEX LINE
CORPORATION, a for-profit foreign
corporation,

Defendants.

CASE NO. C20-1467-JCC

ORDER

This matter comes before the Court on the parties' stipulated motion for a Rule 35 examination (Dkt. No. 8). Having thoroughly considered the parties' stipulated motion and the relevant record and finding that Plaintiff Hyung Suk Kim's physical condition is in controversy and good cause, the Court hereby GRANTS the motion. A Rule 35 examination of Plaintiff Hyung Suk Kim may be conducted, subject to the following terms and conditions:

Date & Time: November 17, 2020 beginning at 12:30 p.m. Pacific Time, lasting no more than two (2) hours

Place: Machaon Medical Evaluations
Medical Dental Building
509 Olive Way, Suite 1045

Seattle, WA 98101
Telephone: (206) 323-1999

Manner: Physical examination by a licensed orthopedic surgeon and physical rehabilitation doctor.

Examiners: Alan Brown, M.D.; Marvin Brooke, M.D.

Conditions: Plaintiff Ji Hyeon Seol will be present and will be allowed to accompany Mr. Kim into the Machaon Medical Facility. Plaintiffs will also be allowed to have a single legal observer present in the examination room; however this observer will not video or audio record the examination. Absent unforeseen circumstances, this will be the only medical examination conducted pursuant to FRCP 35. Mr. Kim will not be required to fill out any forms or paperwork prior to or during the exam.

Scope: Drs. Brown and Brooke may each perform a physical examination to include testing for things such as strength, sensation, coordination, reflexes, balance, and a functional assessment. No invasive testing or testing that would cause pain to Mr. Kim shall be performed. Drs. Brown and Brooke may utilize a stethoscope, reflex hammer, flashlight, tape measure, safety pin, scale for weight, and dynamometer to measure grip strength, goniometer to measure angles and an inclinometer to measure turns and bend. No other equipment shall be utilized. A clinical interview and history may also be taken, but any interview is limited to non-leading, non-argumentative questions focused on Mr. Kim's medical history and current condition. Issues pertaining to the Defendants' alleged liability will not be addressed. Mr. Kim shall remain fully clothed throughout the examination.

Report: Pursuant to FRCP 35(b), Defendants shall produce, a signed, typewritten report setting forth in detail the examiners' findings, including diagnoses, conclusions, and the results of any tests. The report shall be delivered to Plaintiffs' counsel no later than 45 days from the date of the examination.

Deposition: Defendants will make the examiners available for deposition at a mutually-agreeable time. Plaintiffs shall not be charged for records review, or any other deposition preparation by the examiners.

Agreement: Defense counsel shall advise the examiners of the above conditions for the examination, and make sure the examiners agree to all conditions of this Order.

Testimony: The examiner shall not be permitted to testify at trial if the report and deposition are not supplied in compliance with the terms of this Order.

DATED this 17th day of November 2020.

John C. Coyle

John C. Coughenour
UNITED STATES DISTRICT JUDGE